

Pat Lynch said that he's the architect for this project and he works out of 7711 W. Washington Street, South Bend, Indiana 46601.

Dwayne Hogan asked Mr. Lynch what he would like to do this evening.

Mr. Lynch said that the first thing he would like to do is take just a second on behalf of Bill & Bev Martin, the contractor and himself to thank the board for holding this special meeting. Mr. Lynch said that he knows that it's an evening taken up for this and they appreciate it to help them expedite this. Mr. Lynch said that as you can understand this has created some anxiety for them. Mr. Lynch said to have the opportunity to get this out on the table, transparent and discuss, they really appreciate that. Mr. Lynch thanked the board.

Mr. Lynch said that he thought he would start this evening by trying to give you a sense of what they were thinking last June when they first approached the county with this project. Mr. Lynch said that Bill and Beverly Martin have owned that property for almost twenty-eight years and they both knew that the existing structure they owned was a legal nonconforming structure. Mr. Lynch said that it was in the setback in the rear yard.

Mr. Lynch said that they also knew that property house aside is extremely difficult --- it's a very constrained corner lot under the existing zoning. Mr. Lynch said that it appears to him that the existing zoning seems to have been aimed at much larger properties. Mr. Lynch said that the setback required for the front is twenty-five feet; the setback required for the rear is twenty-five feet and the lot is sixty feet deep, which left them a ten foot ribbon that the zoning would smile upon. Mr. Lynch said that they knew they would need some relief. Mr. Lynch said with those two ideas and the schematic, they approached the county and said that they wanted to have a conversation about it. Mr. Lynch said that their scheme that they would like to build here they feel respects the current zoning for the setback on Kankakee, which is a public cease. Mr. Lynch said that with respect to the setback on Delaware, again the public front, its ten feet lower than the maximum height, and it falls well within the foot print.

Mr. Lynch said that the issue they were discussing was how they were going to deal with the rear property line, which the existing house was already in it. Mr. Lynch said that the conversation was on the lines of that old existing house, the garage was two feet from the property line - it was really right on the line. Mr. Lynch said that their new proposal was less ---- it made the nonconformity less. Mr. Lynch said in the process of that conversation, somehow it came to be that they understood that they didn't need a variance --- they were doing the right things and it conformed and they could get their permit, to find out later, that there are some I's that needed to be dotted and T's that needed to be crossed, which is why they're here this evening to try to reconcile this.

Mr. Lynch said that there are two points that he wants to emphasize. Mr. Lynch said first is he believes that the county, homeowners, general contractor and himself were working in good faith here. Mr. Lynch said that he thinks that everyone was trying to communicate --- nobody was trying to get away with anything, and they wanted to do the right thing. Mr. Lynch said that they approached the city with their concerns, but somehow something didn't get connected. Mr. Lynch said that he can't speak to that because he doesn't know how that part works.

Mr. Lynch said that the second thing that he really wants to emphasize is that corner lot is extremely difficult – it's constrained and you can even argue that it's unbuildable without some relief from the Board of Zoning Appeals. Mr. Lynch said that his point is he doesn't think they could have done anything else to make it better because of the existing configuration there.

Mr. Lynch said with that in mind, they would request that you grant us this variance so that they can proceed and put this all behind them.

Dwayne Hogan asked if there are any questions, or concerns from the board.

Glen Minich said that they have a nice picture of the original house, but they don't really have a good picture of the way the new house lays on this footprint.

Mr. Lynch said that the new garage is six feet away, not two feet.

Mr. Lynch up at the bench going over the site plans with the board members.

Mr. Lynch said that he's trying to explain the new garage is farther away from the original garage.

Glen Minich asked Mr. Lynch how much taller is the home today than it was originally.

Mr. Lynch said that the porch on the Delaware side is fifteen feet from the line. Mr. Lynch said that the zoning allows open porches to encroach into the twenty-five foot setback.

Attorney Ambers said that he didn't hear his responses on how much taller the home is.

Mr. Lynch said that it's twenty-four foot six tall now. Mr. Lynch said that zoning allows thirty-five.

Attorney Ambers said that the question was what it was before.

Mr. Lynch said that his notes show that the R1B maximum height is thirty-five feet, and they're twenty-four foot six inches.

Attorney Ambers asked Mr. Lynch wasn't your question how much taller it was than the previous structure.

Mr. Lynch said he thinks that it is seven feet.

Dwayne Hogan asked for remonstrators here this evening for this petition.

Remonstrators:

Dave Ambers attorney with the law practice at 105 "J" Street, La Porte, Indiana. Attorney Ambers said that he's here on behalf of George Jungman and Robert Hines. Attorney Ambers said that Mr. Jungman lives right next to this property and Mr. Hines lives across the street.

Attorney Ambers said that the purpose of the remonstrance today is the fact as Mr. Lynch stated, we have a previous nonconforming use which went through quite a remodel and addition, to where it's an even greater nonconforming use. Attorney Ambers said that before he goes into his actual objection with you, just to address a couple of the comments from Mr. Lynch. Attorney Ambers said that they knew it was an illegal nonconforming use before they started. Attorney Ambers said that is the key in this matter. Attorney Ambers said that this isn't an innocent ignorance of the laws no excuse situation, they knew what the ordinance said.

Attorney Ambers said that one missed statement he believes is the fact that Mr. Lynch said that this new building fell within the footprint of the old building. Attorney Ambers said that's not true. According to his clients, they've added a thirty foot new section to this home, as well as second story, which he thinks that you're aware of the second story. Attorney Ambers said that they argue that the lot is unbuildable. Attorney Ambers said that if they wanted to build something else, they have room elsewhere on their continuance property to build such a large home.

Attorney Ambers said quite frankly, Mr. Lynch didn't tell you what all the violations are. Attorney Ambers said that with regards to his objection and I.C. 36-7-4-9-1-8.5 (a), they cannot satisfy any of the three requirements under Indiana Code. Attorney Ambers said that under subsection (a) (1), the grant of the variance would endanger the safety of Mr. Jungman's home due to the fact that there is a structure --- some kind of a problem over there as tall as that is now it could collapse over onto Mr. Jungman's property, similar to the concerns you have when someone comes in for a cell tower.

Attorney Ambers said more importantly, in RA2 and A3, they attempted to hire an appraiser and he was just hired last Thursday and there just wasn't time to get a written appraisal for you folks, but Mr. Jungman's property well most likely will be decreased dramatically due to the fact that this nonconforming use is not only larger in length, but taller in height, rather than the single story cottage that existed previously. Attorney Ambers said that Mr. Jungman now has to walk out of his house and look at this wall and the roof above. Attorney Ambers said that the loss of light well cause increased maintenance expenses to Mr. Jungman's property in the ability for plants to grow.

Attorney Ambers said that under A3, the strict application the ordinance will not result in practical difficulties, the ordinance should have been followed in the first place. Attorney Ambers said that this isn't a situation where he says that there is a ribbon of buildable area in this lot, it created the problem. Attorney Ambers said that there was a home there that violated the setback requirements, which was a legal nonconforming use. Attorney Ambers said that they could have come to you, obtain the variance to rebuild and remodel on that footprint, you would have been totally within your right to grant them a variance. Attorney Ambers said that he

guesses that you're totally within your right to grant them a variance tonight if they meet the statutory criteria.

Attorney Ambers said that in this case, they choose to go greater than the nonconforming use and higher knowing that they needed a variance. Attorney Ambers said that if they were told by somebody within the county you don't need a variance, they knew they did. Attorney Ambers said that they should have come in and filed a variance; they should have called Mr. Adamasky's office – Mr. Biege and said that your Building Commissioner is telling others, he doesn't know who it was, but they told us we didn't need a variance for this, but we're pretty sure that they do, could you give a legal opinion on this before we start construction and invest hundreds of thousands of dollars into a structure that we may have to knock down. Attorney Ambers said that they didn't do that.

Attorney Ambers said that once the air was brought to light and complaints were (inaudible), did they stop, no, they've been working seven days a week out there trying to get this done so they could come in here and say, sorry but we're so far along, really you don't want to make us knock this down. Attorney Ambers said that it's truly under the law that they have unclaimed hands because they knew they were violating the law before they even started.

Attorney Ambers said that according with your own ordinance, section 2811 B3 goes beyond statutory requirements, they have to show to you that there are no exceptional or extraordinary circumstances, or they have to show that there are, exceptional or extraordinary circumstances for conditions to apply to this property that don't apply to rest of the zoning district. Attorney Ambers said that all of these lots out there are small. Attorney Ambers said that all of our lake areas have small lots. Attorney Ambers said that they own more than one for a reason. Attorney Ambers many people you will see when you get to his exhibit C have conformed over the years and kept their homes small, or if they want something larger, they acquire more lots to give themselves more space to work within the ordinance.

Attorney Ambers said that the variance is not necessary for the presentation and enjoyment of substantial property right possessed by others in the same district; they have a right; they had a house; they had a footprint that they could have used and they simply ignored the law and choose to enlarge that footprint and the height.

Attorney Ambers said that Section 4.04, which is the primary concern that he sees here is that they're pointing out all the violations; a rear setback of twenty-five feet is required. Attorney Ambers said that they have that front and they could have had if they would have moved to their other lot, but he presumes that they're going to put their septic tank – they didn't have to put that home right there where it is.

Attorney Ambers said that under your ordinance Section 2902, if there is a nonconforming use and in Section 29 are your rules for the nonconforming use. The original size cannot be increased – that section requires that the house would have had to be damaged in some way. Attorney Ambers said that there has been no evidence presented that somehow that house was damaged,

which necessitated these repairs or remodeling. Attorney Ambers said under 2902 ©, if there would have been a fire, or damage by a natural cause, they could have built within the first floor footprint and their total square floor area could not have exceeded the previous residence. Attorney Ambers said that they have more than doubled it, and pretty closed to triple it by the time they added the actual length and added the second story.

Attorney Ambers said that under 2902 (d), they could have rebuilt it if the county would have declared it unsafe, or unfit for habitability. Again, no evidence presented the county any such determination.

Attorney Ambers said that 2902 (e), the only alteration, or rehabilitation that was allowed to take place was if it would have conformed to the zoning ordinance code, and it does not; they have a second story, they're beyond the footprint and they haven't complied with the twenty-five feet setback.

Attorney Ambers said that under 2902 (f), expansion must be within the required setbacks, which they have not done, and even though they have the land to do so, and there can be no additional height above the nonconforming portion of the building. Attorney Ambers said that they added seven to ten feet to the height of this structure when they added that second floor.

Attorney Ambers said that 2902 (h), nonconforming structures cannot be enlarged or altered in anyway which increases the nonconformity, unless approved by your board. Attorney Ambers said that they never came to you until there started to become a problem, even though they knew they needed to be here.

Attorney Ambers said that he cites for you in Section 3 of the objection four cases under Indiana Law, which he thinks anyone of which offers you to deny this variance, and the most important one is that he's sure you're aware: Cross vs. Harris in Michigan City, Indiana.

Attorney Ambers said that their Building Commissioner for the City of Michigan City granted a permit for a thirty-five foot tower attached to a lakefront owner's house – actually it was a fifty-foot, thirty-five feet was their legal height. Attorney Ambers said that case went to the Honorable Judge King and in a one-hundred page order he ruled that it wasn't a tower – their tower ordinance was meant for cell phone tower and that structure had to be taken down to thirty-five feet. Attorney Ambers said that it went to the Court of Appeals and it was upheld and that's what you need to do here.

Attorney Ambers said therefore, on behalf of Mr. Jungman and Mr. Hines they ask that you force them to remove the second story, go back to the original footprint, or to move it beyond the twenty-five foot setback. Attorney Ambers said that he's attached for you Exhibit A, a picture of Mr. Jungman's backyard, Exhibit B is looking from the intersection of the street how massive this home is, compared to Mr. Jungmans. Attorney Ambers said Exhibit C in the lower left quadrant, you can see in blue on beacon where Mr. Jungman's – if you look in that block where that home is located there aren't a bunch of monstrosities, if there are larger homes, they're on more than one lot. Attorney Ambers said that Exhibit D is the appropriate section of the Indiana

code that he cited 36-7-4-9-1-8.5 and the two pages of your zoning ordinance concerning the nonconforming uses and what they can and cannot do.

Attorney Ambers said that on behalf of his clients he will be glad to answer any questions. Attorney Ambers said that Mr. Hines is out west at Mayo Clinic getting some medical treatment and Mr. Jungman has to work tonight. Attorney Ambers said that he will be happy to answer any questions you may have concerning the objections,

Dwayne Hogan asked if there are any questions.

Glen Minich asked as Annemarie stated previously, that they did come to us and they were convinced by the Building Department that they could proceed. Glen told attorney Ambers that he did a great job laying this all out, but he just wanted to make sure that you understand that they're not at fault in that point.

Annemarie Polan, Building Commissioner, said that she doesn't either.

Glen Minich said that we didn't get to see it previously, but the homes out there are very old and just the pure age of them allows for them --- the one home to east of them has been redone. Glen said that it's not going to be uncommon for people to go on and make some improvements on those homes. Glen said that they're valuable -- Glen said that this house is within eye view of the lake. Glen said Lake Frontage is hard and rare and increase the value there.

Glen Minich told attorney Ambers since his clients aren't here, is there anything that we can do to make this work for both parties. Glen told attorney Ambers that he's telling us that he wants us to take the second story down and you want it moved to the twenty-five feet, but has he understands from Annemarie, a standard procedure in our office is that if they're making it better, we don't make them go all the way to the twenty-five feet. Glen said that they were trying to make it less intrusive on the neighbor by moving it to six feet rather than a two feet, and we have in the past allowed that situation to happen.

Attorney Ambers said that the home (inaudible) is Mr. Hines. Attorney Ambers said that when he remodeled he was forced to follow the setbacks. Attorney Ambers said that he added a garage and he wanted his garage to be bigger and he was told sorry, twenty-five feet from the street and he complied with the ordinance and he made his garage/barn smaller to meet the requirements. Attorney Ambers said that as far as making it better, a portion of this they did make better going from two feet to approximately ten feet, but they have actually increased the nonconforming use by adding that thirty feet of building and left the other one where it is. Attorney Ambers said that he can't totally speak for his clients, but he knows that with speaking with one of them tonight, if the second story came down he doesn't even think that they would make them go back to the original footprint, but he can't be bound by that.

Attorney Ambers said that it's unfortunately that they got missed information from the Building Department, but mistakes happen in life; just like that mistake that happened in Michigan City.

Attorney Ambers said that guy went to the City and he thought he was complying with the tower ordinance; he had a building permit just like these folks have and he went out and built it. Judge King said down it comes – down it comes to thirty-five feet. Attorney Ambers said that he's not unsympathetic and his client's aren't unsympathetic, but when they knew there was a problem, they should have filed for a variance regardless of the decision they were given, or contacted counsel, and he's assuming they didn't have an attorney in this process, but all of this could have been avoided because they knew up front that they were violating the ordinance.

Attorney Ambers said that he's seen nothing presented to you tonight, and he's assuming that there was no presentation at the last time that these folks haven't even addressed the criteria. Attorney Ambers said that he doesn't even know how you grant a variance on something that has not even been properly presented.

Attorney Ambers asked if there are any other questions.

Annemarie Polan, Building Commissioner, told attorney Ambers that he mentioned in Article 29 all the different paragraphs, but you didn't mention Paragraph (a). Annemarie said that it says structures and buildings that are existing and lawful and the effective date of this ordinance or amendments thereto, may be continued even though the structure or building does not conform with the dimensional or other provisions of this ordinance, subject to the following provisions. If the non-conforming structure or building is altered or modified so as to eliminate, remove or lessen any or all of its non-conforming characteristics, then the non-conforming characteristics shall not be later re-established or increased. Annemarie said that allows them to do that.

Attorney Ambers stated no it doesn't. Attorney Ambers said what that paragraph says and if Mr. Adamsky wants to interrupt me, but if you're over – encroaching and you take that encroachment off, you can't later come back and say well it use to be there so I can just put it back. Attorney Ambers said that is what that provision says. Attorney Ambers said that it doesn't say that if you make it less you're off the hook. Attorney Ambers said that's not what it says.

Attorney Adamsky said just to be clear, you're not saying that a petitioner can't adjust a non-conforming use. Attorney Adamsky said that the section you really left out was section (g) where it says it can be done by only coming forward and requesting a variance.

Attorney Ambers said that he mentioned that in his oral argument. Attorney Ambers said that he thought that they had to come to you before they did this and they failed to do that, even though they knew they had to, then they went like crazy on construction seven days a week.

Dwayne Hogan asked for any other remonstrators for or against.

Remonstrator:

Dwayne Hogan asked for name and address for the record.

William Martin, 7650 W. 123rd Place, Palos Heights, Illinois. Mr. Martin said that he is also the owner of the property in question here tonight.

Mr. Martin said that he would also like to thank you for taking an extra day to come here and listen to this.

Mr. Martin said that's not hard for him to listen to Mr. Ambers. Mr. Martin said that he feels his neighbors are being somewhat (inaudible) about this process. Mr. Martin said that they did apply for a variance and to suggest that we just are breaking the law is a bit hard for him to understand. Mr. Martin said that he also spent time with both Mr. Hines and Mr. Jungman and told them about the project that was coming up. Mr. Martin said that Bob Hines was kind enough to give him the name of his roofer who did his project. Mr. Martin said that he didn't care to get into the detail of the project. Mr. Martin said that he also introduced his contractor Vic to George after they had dug the hole. Mr. Martin said that he saw the size of that property in advance and he knew that there was a project going on.

Mr. Martin asked why those two waited until this late juncture where we already had the second story on to bring this to people's attention, he feels that it has put him in a position of having drawn enough things the appropriate way, getting a permit and getting to start the process. Mr. Martin said that the person who is potentially damaged here is he and his wife.

Mr. Martin said that if they're forced to take that building down, or restructure it, there's a tremendous loss from those materials, labor, costs and time associated with it.

Mr. Martin said that he wants to tell you a little bit about the building before they took it down. Mr. Martin said that facing George's property was a building that was built in 1950 and the wood was beginning to deteriorate and there was no way for them to even keep paint on the siding anymore, regardless of how many times they painted it. Mr. Martin said that it also wouldn't even hold the gutters up anymore, so George's view coming out of his house would see falling gutters, peeling paint and sideboards splitting as the termites began to eat away at some of the foundation. Mr. Martin said that they didn't bring that to the county, and they didn't think that was necessary. Mr. Martin said that he didn't realize under the law that you had to do those kinds of things.

Mr. Martin said that he also had a forty foot oak tree that would encroach upon George's driveway that he would have to trim every year in order for him to get in and out of his driveway. Mr. Martin said that they took that tree down, and they also excavated --- the septic tanks that ran along his driveway and it literally touched the side of his driveway. Mr. Martin said that they removed that to eliminate the possibility of that caving in and causing some damage there in the future.

Mr. Martin said that he feels like they went a long way in trying to mitigate some of the things for Mr. Jungman and put up a nice structure so when he comes out of his, he will see a nice building -- it's new, it's nice, it's neat. Mr. Jungman said that it gives him a little more sun because we've pulled back away from his area and they've have taken the tree down that provide

sun on his lot. Martin said that they feel a little bit like they're in a position here that has made everyone uncomfortable.

Mr. Martin said that the second thing that he would like to add is that there are several structures within this community and in this area, who are also non-conforming, yet have replaced existing structures and made them taller than what they were before. Mr. Martin said that while Mr. Hines while he remained within the setback, his lot is still non-conforming because he's non-conforming on the same side that he's not conforming on, which is the east side, yet he built it larger.

Mr. Martin said that he feels like if we had to get to the point where they really have to dismantle structures, he would begin to look for places that didn't get a variance. Mr. Martin said that he's appealing to you to please allow them this variance – Mr. Martin said that really didn't work seven days a week to try to beat some deadline, that's a false characterization. Mr. Martin said that they put in an order, they got a building permit and they never got a red tag so they continued to proceed according to the plan that they submitted to the county in the beginning.

Dwayne Hogan asked if there are any questions.

Mr. Martin said finally he would that you submit the variance and we get on with this. Mr. Martin said we has neighbors will find a way to make peace with one another.

Mr. Martin said that he does have supporting letters from people in the community.

Dwayne Hogan asked Mr. Martin to introduce them to Brad.

Dwayne Hogan asked if there are any other questions from the board.

Dwayne Hogan asked if there are any other remonstrators here this evening.

Dwayne Hogan asked for name and address for the record.

Mary Jane Thomas, 706 North Kankakee Trail, said she is the property owner to the east, 7637 North Kankakee Trail. Ms. Thomas said that she's here in support of this variance because the improvements that are made will improve the assessed value in the neighborhood and do not detract from any of the other homes that have been improved in the neighborhood, in fact it adds to that. Ms. Thomas thanked the board for their time.

Dwayne Hogan asked if there is anyone else.

Melissa Mullins Mischke asked the architect to come back up. Melissa asked Mr. Lynch if he brought any plans for them to see any elevations of the new structure – something to show us the change from what it was to what the anticipated final project would be.

Mr. Lynch is going over the site plans with the board members.

Board members going over the site plans with Mr. Lynch.

Melissa Mullins Mischke asked Mr. Lynch if he's showing where the new location of the well and septic.

Mr. Lynch asked if she's talking about the septic. Mr. Lynch said that his understanding is these circles here are old mechanical septic systems. Mr. Lynch said that those are gone – they're no longer in service and is backfilled with dirt. Mr. Lynch was showing the board members on the site plan where the new septic system is located.

Glen Minich said that he was wondering if the front section could be lowered.

Mr. Lynch said that the house was designed so that --- like Bill said is a story and a half, so the high roof was designed to sweep under the porches. Mr. Lynch said that the poles are not eight feet high along the Kankakee, so that would bring this point here lower than the porch roof, which comes across like an old traditional porch that wraps around there. Mr. Lynch said that it would create some issues.

Mr. Lynch said that this structure was quite old and it's deteriorating. Mr. Lynch said that they were putting a lot of energy into the house.

Dwayne Hogan asked when the original construction of the house was.

Mr. Lynch said that it's in phases.

Dwayne Hogan asked first year originally built.

Mrs. Martin said in the 50's or late 40's.

Mr. Lynch said that it was built like a lake cottage.

Dwayne Hogan asked Annemarie if there is anything that he missed.

Annemarie Polan, Building Commissioner, said that she can't fault with anything they did. Annemarie said that they did everything that they were supposed to do. Annemarie said that they're under the height requirement and looking at the other homes out there and the even the size of Mr. Hines garage, Annemarie said that they're all pretty big homes on small lots. Annemarie said that some are bigger than others, but she didn't think that it's out of character with the neighborhood at all. Annemarie said that this will be an improvement and add value.

Mr. Lynch said that they really did want to take advantage of using that existing structure and that is also the section of the lot that is the most desirable.

Glen Minich asked if the second story is cathedral, or what exactly is in that part of the structure.

Mr. Lynch said that it's a game room.

Mr. Lynch and board members going over the site plan.

Glen Minich said that lowering the gable down to or near its existing height wouldn't be that dramatic. Glen said you said that you said it's only seven feet higher than its original structure. Glen said that if this gable was lowered by seven feet, and thereby obstructing the neighbor's house ---- Glen said like this picture, we can't deny that your beautiful home is kind of eclipsing the neighbor right now.

Annemarie Polan, Building Commissioner, said that she thinks Mr. Hine's house did the same to them if you look at it.

Glen Minich said it is a little bit different, but there is a street between them. Glen said that the neighbor's home is already as far as to the western line according to the Beacon property map. Glen said that they really don't have any room for relief. Glen said that he's just looking for a little thing that would make it more accommodating to the neighbor.

Mr. Lynch is up at the bench going over more of this site plan.

Melissa Mullins Mischke told Mr. Lynch that she thinks that we all can appreciate your attention to design, but we're trying to make it accommodating for parties.

Mr. Lynch said that it's tricky to do and make it look right.

Board members speaking amongst themselves.

Attorney Ambers said that he's just going to throw out a suggestion that he doesn't think any of us have done before, at least he hasn't. Attorney Ambers said that you seem concerned about the resolution; you seem concerned about which way to go on this. Attorney Ambers said maybe it's best for everybody to table this to the February meeting to have the parties sit down and talk about a possible settlement. Attorney Ambers said that he's just throwing that out there and he doesn't think that his clients would object to that. Attorney Ambers said that if that is the route that you want to go and squeeze it back in in two weeks, or the February meeting.

Mr. Martin said that he feels bad that George feels like his property is devaluated, but if he would want to get out of that property, or sell that property, Mr. Martin said that he would be happy to buy it.

Melissa Mullins Mischke asked Mr. Martin if it's his preference that we wait until the February meeting so that you can approach him about purchasing the property.

Melilssa Mullins Mischke asked Mr. Martin his intent.

Mr. Martin said that his intent would really be that they did everything they thought they need to do and we move forward, because they invested a lot of money in this. Mr. Martin said that even the thought of trying to destruct some of this at this point would be a great expense. Mr. Martin said that it would be less for him to buy his property then changing the roof line and redesign that whole home. Mr. Martin said that we would lose time, injury, use over the summer. Mr. Martin said that their goal was to try to be done by Memorial Day. Mr. Martin said that is in jeopardy now as we speak because of the time and energy they had to put forth in this. Mr. Martin said that he would like to be granted the variance under the good faith efforts that they put forth to begin with. Mr. Martin said that he and George have lived next door to one another for twenty-five years. Mr. Martin said that Bob Hines family has lived out there for twenty-five years. Mr. Martin said that he doesn't find this to be a long term issue; is it going to be a ten day, ten week, or ten month issue, if we get the variance and move forward. Mr. Martin said that it's not going to create a range war between the neighbors, he can assure you.

Mr. Martin said that if George feels harmed by all this and he would like to get out, he would be happy to negotiate that with him.

Dwayne Hogan thanked Mr. Martin.

Dwayne Hogan asked if there is anything else.

Attorney Adamsky said that we have heard a lot and we want to make sure that you address all of the standards within the zoning variance. Attorney Adamsky said that the suggestion is before the board to table this, and that's certainly in your option as well, if you think that the parties would have the ability to, or any reason to get together to try to resolve it prior to the next meeting. Attorney Adamsky said that you've heard the responses.

Attorney Adamsky said that the three standards you must address in deciding whether to grant, or deny the variance, if you go that route you would have to address whether the approval would be injurious to the public health, safety, morals, or general welfare of the community. Attorney Adamsky said that you would have to address whether the use and value of the area adjacent to the property included in the variance would be affected in a substantially adverse manner. Attorney Adamsky said thirdly, this is the one that is important for this particular petition and you would have to address whether the strict application with the terms of the zoning ordinance will result practical difficulties and use of the property.

Attorney Adamsky said that there is a standing measure in zoning petitions that a person cannot create the practical difficulties for themselves.

Dwayne Hogan asked the pleasure of the board.

Candice Nelson said that she thinks that one of the reasons for doing special meetings that she came to while on a night that she wasn't supposed to be here that we are going to decide whether

we want to proceed with the motion and she doesn't think that we should table this. Candice said that she knows Mr. Martin's wife is not in favor of tabling this. Candice said that she thinks that they want to proceed forward. Candice said that she thinks that we need to decide what we're going to do and she is for this and she doesn't see a problem with this.

Glen Minich said that the only problem he has --- we have to look at this like this isn't the first thing. Glen said that he probably would have passed this if he hadn't seen this. Glen said that the problem he has is that he has been to the property and he sees how it eclipses the neighbor's home and that bothers him. Glen said that he would like to see the front of the home be lowered a little bit, nearer to where it was originally and then he doesn't see an issue, because he would have allowed the rest of it to be constructed. Glen said that one front section of that home is more invasive on the adjoining home than anything else. Glen said that is the way he feels.

Melissa Mullins Mischke said that she has to agree with Glen. Melissa said that while this six foot or eight foot setback is certainly an improvement, just because we have other homes in the area that are not within the setback, does not mean that is a practice that she wants to continue with this board or we're never going to get a handle on those setbacks.

Glen Minich said that he would like to make a motion that the Petition for Developmental Standards for William E. Jr., & Beverly A. Martin for their rear setback be granted and for the second story addition to the home excepting the front gable on E. Delaware Trl needs to be lowered near within two feet of its original height. This property is located at 7634 N. Kankakee Trail, Rolling Prairie, Indiana, Galena Twp., zoned R1B

Attorney Adamsky said that you're making a motion to grant the rear setback. Attorney Adamsky said that there is not a height restriction there, but because it's an expansion and non-conforming use you're putting a condition on the expansion on the front gable.

Attorney Adamsky said that you should still address three elements that the approval subject with the conditions will not be injurious to the public, health, safety, morals and general welfare

Glen Minich stated corrected.

Attorney Adamsky said that it will not substantially affect the property values in a negative manner.

Glen Minich stated correct.

Attorney Adamsky said that the strict application of the terms of the zoning ordinance would result in practical difficulties and use of the property.

Glen Minich said so noted.

Dwayne Hogan said that there is a motion.

Melissa Mullins Mischke seconded.

Dwayne Hogan asked if there are any questions, or concerns.

Candice Nelson asked Mr. Martin if can afford to do that. Candice told Mr. Martin that she heard him come up and mention that you would go far as financially buying the property versus trying to tear off and re-do.

Mr. Martin said that he would have hoped that we could have worked something out here tonight, but if that's not possible, they will have to look at other ways to do that.

Candice Nelson asked Mr. Martin what the other commissioner was suggesting, is that something you could do at this point.

Mr. Martin said that he doesn't know if that is an issue of finance, or is that something that we want to do. Mr. Martin said does he really think that they're encroaching upon Mr. Jungman's view and access to the lake and change the value of his property, he thinks that they only changed it in a positive effect. Mr. Martin said for him to go through the re-engineering of changing the ridge line with what's there, given that is a beam goes all the way across --- it would be a tremendous expense for them to do that. Mr. Martin said that they wouldn't undertake take that, they would undertake other methods to try to cure this. Mr. Martin said that he doesn't know whether it can be done with this group here, or if they need to seek counsel as his neighbors have. Mr. Martin said that he's not sure what they will do.

Glen Minich said that he guesses that would be his hope in making this motion he is trying to satisfy both parties. Glen said that what he's hoping is if you work something out with your neighborhood, is there some way that we can change this.

Mr. Martin said that the variance is the variance. Mr. Martin told Glen that the permit was extended and they have put a ton of energy and effort into that ---- serious money too.

Dwayne Hogan said that we have a motion and a second.

Voting Aye: Glen Minich and Melissa Mullins Mischke.

Motion denied 3-2.

Candice Nelson made a motion that we approve the Petition for a Variance from Developmental Standards for William E. Jr., and Beverly A. Martin for a rear setback and a second story addition to the existing home on the property located at 7634 N. Kankakee Trail, Rolling Prairie, Indiana, Galena Twp., zoned R1B.

Attorney Adamsky said because the approval will not be injurious to the public health, safety, morals, or general welfare of the community.

Candice Nelson stated yes.

Attorney Adamsky said because the use and value the area adjacent to the property included in the variance shall not be affected in a substantial adverse manner.

Candice Nelson stated yes.

Attorney Adamsky said that the strict application of the terms of the zoning ordinance will result in practical difficulties and use of the property.

Candice Nelson said so motioned.

Dwayne Hogan asked if he had a second.

Wally Pritz seconded.

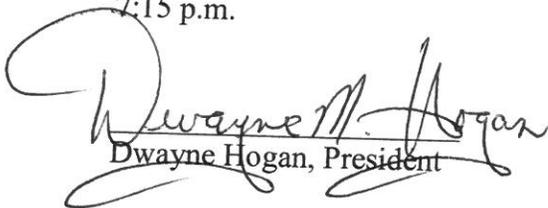
Dwayne Hogan asked if there are any questions, or concerns.

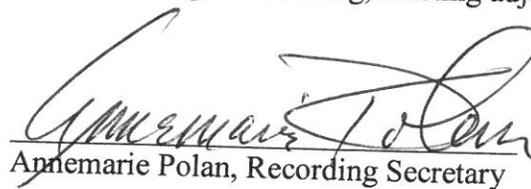
Voting Aye: Candice Nelson, Wally Pritz, and Dwayne Hogan.

Voting Nay: Melissa Mullins Mischke and Glen Minich.

Motion carried 3-2.

There being no further business before the Board of Zoning this evening, meeting adjourned at 7:15 p.m.


Dwayne Hogan, President


Annemarie Polan, Recording Secretary